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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**
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11 JOSE GOMEZ, individually and on behalf) Case No. CV 10-2007-DMG (CWx)
12 of a class of similarly situated individuals,)
13 Plaintiff,) **ORDER TO SHOW CAUSE**
14 v.)
15 CAMPBELL-EWALD COMPANY, a)
16 Delaware corporation,)
17 Defendant.)
18

19 On March 19, 2010, Plaintiff filed a class action Complaint in this Court alleging a
20 single cause of action under the Telephone Consumer Protection Act, 47 U.S.C. §§ 227 *et*
21 *seq.* ("TCPA"). On May 19, 2010, Defendant filed a Motion to Dismiss. Plaintiff filed
22 an Opposition on June 21, 2010. Defendant filed a Reply on July 12, 2010. The Motion
23 is currently set for hearing on August 30, 2010.

24 The Court, however, has serious questions about whether this case should remain
25 in federal court. Section 227(b)(3) of the TCPA provides as follows:

26 A person or entity may, if otherwise permitted by the
27 laws or rules of court of a State, bring in an appropriate court of
28 that State—

1 (A) an action based on a violation of this subsection or
2 the regulations prescribed under this subsection to enjoin such
3 violation,

4 (B) an action to recover for actual monetary loss from
5 such a violation, or to receive \$500 in damages for each such
6 violation, whichever is greater, or

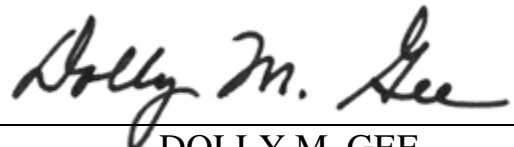
7 (C) both such actions.

8 47 U.S.C. § 227(b)(3). The Ninth Circuit has held that pursuant to section 227(b)(3),
9 “state courts have exclusive jurisdiction over a cause of action created by . . . the
10 Telephone Consumer Protection Act of 1991.” *Murphey v. Lanier*, 204 F.3d 911, 915
11 (9th Cir. 2000) (joining the Second, Third, Fourth, Fifth, and Eleventh Circuits in “the
12 somewhat unusual conclusion that state courts have exclusive jurisdiction over a cause of
13 action created by a federal statute” (internal quotations omitted)). It is axiomatic that if
14 this Court determines at any time that it lacks subject-matter jurisdiction, the Court must
15 dismiss the action. Fed. R. Civ. P. 12(h)(3).

16 Accordingly, Plaintiff is hereby ordered to show cause in writing why this action
17 should not be dismissed for lack of subject matter jurisdiction. Plaintiff shall file his
18 response to this Order to Show Cause (“OSC”) by September 3, 2010. Defendant may
19 file a response, if any, by September 10, 2010. The August 30, 2010 hearing on
20 Defendant’s Motion to Dismiss is vacated pending the Court’s ruling on the OSC and
21 shall be re-set by the Court if needed.

22 IT IS SO ORDERED.

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24 DATED: August 26, 2010

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27 DOLLY M. GEE
28 United States District Judge